

Leo Fox, Esq.
630 Third Avenue - 18th Floor
New York, New York 10017
(212) 867-9595
leo@leofoxlaw.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE:

Chapter 11 Reorganization

ABR BUILDERS, LLC,

Case No. 19-11041 (SHL)

Debtor.

-----X
ABR BUILDERS, LLC,

Plaintiff,

Adv. Proc. No. 19-

- against -

NEW YORK STATE INSURANCE FUND,

Defendant.
-----X

**COMPLAINT PERMANENTLY ENJOINING AND
DIRECTING NEW YORK STATE INSURANCE FUND
TO PROVIDE WORKMAN'S COMPENSATION INSURANCE
TO THE DEBTOR UP THROUGH THE MAY 22, 2019 AUDIT DATE
TO RECALCULATE THE PREMIUMS BEING CHARGED TO THE DEBTOR**

The above Debtor-Plaintiff (the "Debtor" and/or the "Plaintiff"), Plaintiff in this adversary proceeding, by his undersigned attorney, in support of this Complaint against the Defendant, hereby alleges upon information and belief,

STATEMENT OF THE CASE

1. This is an action to declaratory and injunctive relief declaring and directing New York State Insurance Fund to provide workman's compensation insurance to the Debtor based upon the recalculated premium amounts arising from a May 22, 2019 scheduled audit date.

JURISDICTION

2. This Court has subject matter jurisdiction over this adversary proceeding, which arises under Title 11, arises in, and relates to the Debtor's case under title 11, in the United States Bankruptcy Court for the Southern District of New York, Case No. 19-11041 (SHL) pursuant to § 1334(b) and pursuant to § 105 of the Bankruptcy Code.

3. The claims and causes of action set forth herein concern the assessment and payment of reinstated workman's compensation insurance in an amount equal to the actual amount required to be paid based upon the Debtor's reduced number of employees under § 105 of the Bankruptcy Code and 28 U.S.C. § 959(b). This adversary proceeding is a "core" proceeding to be heard and determined by the Bankruptcy Court pursuant to 28 U.S. C. §§ 157(b)(2)(A) and (O).

4. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1409 in that this proceeding arises in and relates to a bankruptcy case pending in the district and the claims alleged herein arose in this district.

BACKGROUND

5. On April 4, 2019 (the "Petition Date"), a Petition under Chapter 11 of the Bankruptcy Code was filed by the Debtor in the United States Bankruptcy Court for the Southern District of New York.

6. The Debtor has remained in possession of its property and continued in the operation and management of its business as Debtor and Debtor-in-Possession pursuant to Sections §§1107 and 1108 of the Bankruptcy Code.

7. The Debtor is in the business of general contracting with offices at 39 West 38th Street, Suite 1100W, New York, New York 10018.

PARTIES

8. Plaintiff, ABR Builders LLC, is the Debtor-in-Possession.

9. Upon information and belief, Defendant, New York State Insurance Fund (“NYSIF”), is a not-for-profit agency of the State of New York established in 1914 to provide a guaranty source of worker’s compensation insurance coverage at the lowest possible cost to employees within New York State and has an address at 199 Church Street, New York, New York 10007 (see Exhibit A).

**AS AND FOR THE FIRST CAUSE OF ACTION
FOR DECLARATORY AND INJUNCTIVE RELIEF
UNDER § 105 OF THE BANKRUPTCY CODE
COMPELLING DEFENDANT TO REINSTATE
AND MAINTAIN POST-PETITION WORKMAN’S
COMPENSATION COVERAGE UPON THE DEBTOR’S
PAYMENT OF PREMIUMS BASED ON ACTUAL
AMOUNTS OWED BY THE DEBTOR**

10. Plaintiff repeats the allegations in paragraphs 1-9 above.

11. At or shortly prior to the filing, the Debtor has a total of 30-35 employees not including officers and directors with which it conducted its business.

12. Prior to the Chapter 11 filing, the Debtor, as a general contractor, maintained its required workman’s compensation insurance with the NYSIF.

13. It is essential that the Debtor maintain this insurance because a general contractor is not permitted to operate at construction sites without this essential insurance. Several weeks ago, the insurance lapsed by its terms.

14. NYSIF governing the Workman’s Compensation and Disability Insurance has the practice of billing prospectively for such insurance based upon an audit conducted with historical data. In 2016 and early 2017, the Debtor had approximately 70 employees. From April of 2017 until April of 2018 the number of the Debtor’s employees jumped to approximately 130

employees. Thereafter, the number of Debtor's employees was reduced substantially down to the point that the Debtor has approximately 35 employees at present.

15. It appears that under the present provisions of the Workman's Compensation Law, the Debtor would be required to make a substantial payment on account of the pre-petition debt to a creditor that holds no priority at all. Premiums for workman's compensation claims have no priority since such coverage does not constitute a wage substitute.

16. Nonetheless, NYSIF determined that the Debtor should be billed an additional \$250,000 for 2018 plus prospectively and additional \$250,000 for 2019 and based solely on the past historical numbers requiring that such bills be paid immediately. Attached hereto is an email dated April 8, 2019 (Exhibit B) confirming the above but also advising that pursuant to New York Workman's Compensation Law § 93(b), NYSIF is not permitted to issue a policy of insurance without the payment of approximately \$160,000 in pre-petition premium. NYSIF scheduled a new audit for May 22, 2019 which will result in substantially lower premium payments for the absolutely essential workman's compensation insurance.

17. If the Debtor were to immediately obtain workman's compensation insurance, the Debtor would undertake to work upon three (3) new jobs consisting of (1) new multi-family 8 story building at 402 East 118th Street, New York, New York; (2) new multi-family 8 story building at 336 East 112th Street, New York, New York and (3) gut renovation of 6 story office building at 39 Clarkson Street, New York, New York. The Debtor would make substantial sums of money with respect to these projects

18. The Debtor will suffer irreparable injury and harm in connection with the reorganization unless NYSIF reinstates the Debtor's workman's compensation insurance upon the payment of post-petition premiums based on the actual number of employees until the completion

of the May 22, 2019 audit which will establish the lower premium rates.

19. Debtor-Plaintiff respectfully requests an Order declaring and enjoining Defendant from refusing to reinstate and provide workman's compensation insurance coverage up through the recalculation of the insurance premiums at the May 22, 2019 audit.

**AS AND FOR THE SECOND CAUSE OF ACTION
UNDER 28 U.S.C. 959(b) DIRECTING
THE DEFENDANT TO PERMIT THE DEBTOR TO
MANAGE AND OPERATE ITS PROPERTY AS A
DEBTOR-IN-POSSESSION**

20. Plaintiff repeats the allegations in paragraphs 1-19 above.

21. The Debtor, as debtor-in-possession is required to manage and operate the property in the same manner as a Trustee, receiver or manager is bound to do including, but not limited to, the maintenance of workman's compensation insurance.

22. Adequate relief is not possible without the imposition of declaratory and injunctive relief.

23. The Debtor-Plaintiff is entitled to an Order of injunctive and declaratory relief enjoining the Defendant from refusing to reinstate and provide workman's compensation insurance coverage to the Debtor-in-Possession upon the prior payment of workman's compensation insurance premiums on a post-petition basis.

**THE THIRD CAUSE OF ACTION
FOR PROTECTION AGAINST DISCRIMINATORY
TREATMENT BY A GOVERNMENT UNIT
UNDER § 525 OF THE BANKRUPTCY CODE**

24. Plaintiff repeats the allegations in paragraphs 1-23 above.

25. On information and belief, Defendant is a not-for-profit agency for the State of New York and is therefore a "governmental unit" under the provisions of § 525 of the Bankruptcy Code.

26. Defendant has refused to provide workman's compensation insurance coverage unless payment is made with respect to pre-petition premiums which are due in the amount of approximately \$160,000.

27. Defendant has violated the provision of § 525 of the Bankruptcy Code in that the Defendant attempts to refuse to renew a license and permit for the issuance of workman's compensation insurance even where the Debtor-Plaintiff posts in advance premiums on account of such workman's compensation insurance on a post-petition basis and is therefore discriminating against the Debtor.

28. Plaintiff is entitled to an Order of injunctive and declaratory relief enjoining the Defendant from refusing to reinstate and provide workman's compensation insurance coverage to the Debtor upon the prior payment of workman's compensation insurance premiums on a post-petition basis.

PRAYER FOR RELIEF

WHEREFORE the Debtor-Plaintiff requests that this Court grant it the following relief against the Defendant:

29. As to the First Cause of Action for an Order of the Court permanently declaring and enjoining NYSIF from refusing to open up a workman's compensation policy at the actual rates based upon the Debtor's present number of employees and the Debtor's history and continue up until shortly after the May 22, 2019 audit date.

30. As to the Second Cause of Action for an Order of injunctive and declaratory relief enjoining the Defendant from refusing to reinstate and provide workman's compensation insurance coverage to the Debtor upon the prior payment of workman's compensation insurance.

31. As to the Third Cause of Action for an Order of injunctive and declaratory relief enjoining the Defendant from refusing to reinstate and provide workman's compensation insurance coverage to the Debtor upon the prior payment of workman's compensation insurance premiums on a post-petition basis.

Dated: New York, New York
April 9, 2019

Respectfully submitted,

By: /s/ Leo Fox
Leo Fox, Esq.
Attorneys for Debtor-in-possession
630 Third Avenue, 18th Floor
New York, New York 10017
(212) 867-9595
leo@leofoxlaw.com

EXHIBIT A



New York State Insurance Fund · Address

● 199 Church St, New York



199 Church St, New York, NY
10007

From 199 Church St, New York, NY 1000 Go

View details >

● 8 Corporate Center Dr 3rd Fl, Melville

Open ▾

New York State Insurance Fund - Official Site

<https://ww3.nysif.com> ▾

The **New** York State Insurance Fund (NYSIF) was established in 1914 as part of the original enactment of the **New** York State Workers' Compensation Law. NYSIF's mission is to guarantee the availability of workers' compensation insurance at the lowest possible cost to **New** York employers and to provide timely, appropriate indemnity and medical payments to injured workers, while maintaining a **solvent fund**.

NYSIF Login

Welcome to NYSIF Online Services. Log In.
You are accessing a protected resource. ...

Pay My Bill

NYSIF workers' compensation insurance ...
Payment Plans - PAYGo

Contact Us

The New York State Insurance Fund requires a
letter of clearance when any company ...

Where's My Check

Where's My Check? NYSIF workers' comp and
Aggregate Trust Fund claimants can now ...

Insurance Applications

REQUEST A DOMESTIC POLICY INSTANT
QUOTE. Disability Benefits & Paid Family ...

Find My Case Manager

Find My Case Manager NYSIF workers' comp
and Aggregate Trust Fund claimants can ...

Search results from ww3.nysif.com

Search

New York State Insurance Fund | The State of New York

<https://www.ny.gov/agencies/new-york-state-insurance-fund> ▾

New York State Insurance Fund. The New York State Insurance Fund (**NYSIF**) was established in 1914 as part of the original enactment of the New York Workers' **Compensation** Law. NYSIF is a self-

supporting insurance carrier that competes with private insurers in both the workers' compensation and disability benefits markets in New York State. MISSION:

New York State Insurance Fund Address, Contact Number

<https://findaddressphonenumber.com/Address-of-New-York-State...> ▼

The **address of New York State Insurance Fund** is 1 Watervliet Avenue Extension, Albany, NY-12206-1629, **New York**, United States. **Contact Number of New York State Insurance Fund** The **contact number of New York State Insurance Fund** is +1-631-756-4300, +1-212-312-9000 .

New York State Insurance Fund Address | New York State ...

<https://allbusinessnumbers.com/new-york-state-insurance-fund...> ▼

New York State Insurance Fund resides at 1 Watervliet Avenue Extension, Albany, NY-12206-1629, **New York**, United States provides here all the necessary details like helpDesk helpline numbers i.e. +1-631-756-4300, +1-212-312-9000 by which customers can reach to **New York State Insurance Fund** ...

State Insurance Fund - New York State Workers ...

www.wcb.ny.gov/content/main/Employers/SIFinfo.jsp ▼

New York State Insurance Fund (NYSIF) Information. The New York State Insurance Fund is a not-for-profit agency of the State of New York that was established in 1914 to provide a guaranteed source of workers' compensation **insurance coverage** at the lowest possible cost to employers within **New York State**.

NYSIF Disability Contact Us - New York State Insurance Fund

<https://dbl.nysif.com/Contact> ▼

Please submit the following. You will receive an email response within One Business Day. *Required field
*Your Name:

Videos of new york state insurance fund address

bing.com/videos



NYSIF Premium Audit
Scheduling System Demo

YouTube · 2/2/2018 · 2.1K views



Housekeeping & Maintenance
Safety in Healthcare - Part 5

YouTube · 1/23/2015 · 582 views



Opinion: How Insurers Game
ObamaCare Premiums

WSJ · 9/9/2014

See more videos of new york state insurance fund address

Find My Underwriter - New York State Insurance Fund

<https://www.nysif.com/SIFWCDBLSERVICES/UnderWriterLookup.aspx> ▼

To obtain the **contact** information for your NYSIF underwriter, please enter your policy number below. Please note that this search will return information for active NYSIF policies only. Quote numbers, reference numbers or ATNs will not return accurate information.

New York State Insurance Fund - Wikipedia

https://en.wikipedia.org/wiki/New_York_State_Insurance_Fund ▼

Also try: new york state insurance fund albany ny · new york workers compensatio...

72,800,000 Results

Any time ▼

📍 Near New York, New York · Change

New York State Insurance Fund. The New York State Insurance Fund (NYSIF) is an governmental insurance carrier that provides workers' compensation and disability benefits for employers in New York State. NYSIF is financially self-supporting and competes with private insurance carriers.

NYSIF Disability Quote/Application for Insurance

<https://dbl.nysif.com/Quote/GetQuote/Default.aspx>

NYSIF Disability and Paid Family Leave Benefits **Insurance** Quote System. Get your **NYSIF disability** benefits and paid family leave **insurance** quote in minutes! Per **New York State** law, employers are required to provide short-term disability benefits (DB) and paid family leave (PFL) **insurance** ...

Related searches for new york state insurance fund address

new york state insurance fund **albany ny**

new york **workers compensation** state fund

new york state **ins** fund

new york state insurance fund **phone number**

ny state insurance **guarantee** fund

state insurance fund **claims** address

ny state **worker comp** insurance funds

the new york state fund



New York State Insurance Fund



The New York State Insurance Fund is a governmental insurance carrier that provides workers' compensation and disability benefits for employers in New York State. NYSIF is financially self-supporting and competes with private insurance carriers. It is required by law to provide the lowest possible premiums to maintain its solvency. As of 2015, NYSIF was the largest workers' compensation insurance carrier in New York, with 46% of the market, and that year it earned \$2.48 billion in premiums, placing it in the top ten in the United States.

 Wikipedia

Data from: Wikipedia

[Suggest an edit](#)

EXHIBIT B

Leo Fox

From: Nicholas Reynolds <nreynold@nysif.com>
Sent: Monday, April 8, 2019 1:34 PM
To: Leo Fox
Cc: John Kiba
Subject: #21924170 ABR Builders, LLC

I have been advised by our underwriting department that ABR Builders has applied for an insurance policy with the New York State Insurance Fund (NYSIF). As we discussed on the phone last week pursuant to New York Workers' Compensation Law (NYWCL) Section 93(b), NYSIF is barred from issuing another policy to ABR Builders until the amount owed on the prior policy of insurance is resolved. The underwriting department will be sending out a form letter informing the applicant of this. We have suppressed the billing so ABR Builders will not receive a bill in the mail and I have advised our collection department to stay all collection activity pursuant to the bankruptcy proceeding. NYWCL Section 93(b) states that an employer, whose policy of insurance has been canceled for non-payment by the NYSIF, is ineligible to contract for a subsequent policy of insurance while there remains uncollected billed premium on the prior policy.

Thanks,

Nick

Nicholas Y. Reynolds
Senior Attorney
New York State Insurance Fund
Rochester Legal Department
(585)258-2108

This e-mail transmission contains confidential information that is the property of the sender. If you are not the intended recipient, you are notified that any retention, disclosure, reproduction or distribution of the contents of this e-mail transmission, or the taking of any action in reliance thereon or pursuant thereto, is strictly prohibited. No warranty is given by NYSIF that this e-mail is free of viruses, interception or interference. NYSIF disclaims liability for any unauthorized opinion, representation, statement, offer or contract made by the sender on behalf of NYSIF. NYSIF's delegation of authorities, setting out who may make representations or contract on behalf of NYSIF, is available by contacting NYSIF at mailadm@nysif.com. Jurisdiction for all actions arising out of dealings with NYSIF shall lie only in a court of competent jurisdiction of the State of New York